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RECORD AND BRIEFS

No. 16-460

IN THE

Supreme Court of the United States

STEPHANIE C. ARTIS,
Petitioner,

v.

DISTRICT OF COLUMBIA,
Respondent.

On Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Whether 28 U.S.C. § 1367 tolls the period of limitations to provide a disappointed federal litigant with 30 days to refile her state-law claim in state court free of an otherwise applicable limitations bar, or whether it stops the clock on the state statute of limitations until federal dismissal, then adds 30 days, so that she may delay refiling in state court for months or even years.

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INTRODUCTION

Imagine that a plaintiff sues in federal court, claiming a violation of federal law and several state laws over which the court has supplemental jurisdiction. The action proceeds for several years and at judgment the supplemental claims are dismissed without prejudice, with the statutes of limitations having run during the pendency of the federal suit by operation of law. There is no dispute that if 28 U.S.C. § 1367(d) implements a 30-day period during which the dismissed claims can be refiled in state court free of the otherwise applicable limitations bar, the plaintiff is "guarantee[d]" the opportunity to file her dismissed claims in state court. Pet. Br. 27. The question presented is whether Section 1367(d) instead stops the state limitations clock from ticking and then adds 30 days to whatever time was left before the federal suit was filed, such that the plaintiff may have months or even years to refile her claims.

The answer must be determined based on the text, structure, purpose, and history of Section 1367. All of these interpretive aids point to the same answer. Section 1367(d) "toll[s]"—that is, "removes" or "takes away"—an otherwise applicable limitations bar during the pendency of the federal suit and for 30 days thereafter, unless state law provides for a longer period.

Petitioner advances a radically different conception of the statute's operation. But her "stop-clock" approach divorces "toll" from both its ordinary meaning and the statutory context in which it appears. That effort fails on its own terms. Nor does it make practical sense, where the sole virtue she identifies is that a "diligent" litigant would receive more time to refile than a dilatory one, and she offers no reason why she could not have filed her virtually identical

state-court complaint within the 30-day period provided by Section 1367(d).

A broader point also requires rejection of petitioner's approach. She asks this Court to interpret a modest federal statute tailored to promote the efficient resolution of claims in the federal courts to, as a rule, significantly—and gratuitously—extend state statutes of limitations and displace state-law tolling periods for claims litigated in state courts. That interpretation serves no federal purpose, stands on its head a statute that expressly gives way to state-law tolling provisions, and creates an unprecedented federal intrusion into an area within the historic power of the states. The Court should reject her interpretation, and so affirm.

STATEMENT OF THE CASE

A. Legal Background.

This case concerns the proper interpretation of 28 U.S.C. § 1367(d), a subsection of the supplemental jurisdiction statute. Section 1367 was enacted after Congress accepted this Court's invitation to clarify the circumstances in which a federal district court may exercise supplemental jurisdiction over claims outside of its original jurisdiction. *See* Judicial Improvements Act of 1990, Pub. L. No. 101-650, § 310a, 104 Stat. 5089, 5113; *Exxon Mobil Corp. v. Allapattah Servs., Inc.*, 545 U.S. 546, 557 (2005). In Section 1367(a), Congress provided a "broad jurisdictional grant," but, consistent with this Court's precedent, also specified in Section 1367(c) that the power to hear state-law claims need not be exercised in every case. *Exxon*, 545 U.S. at 559; *see* 28 U.S.C. § 1367(a), (c); H.R. Rep. No. 101-734, at 28-30 (1990), *reprinted in* 1990 U.S.C.C.A.N. 6860, 6874-76 ("House Report"); *United Mine Workers v. Gibbs*, 383 U.S. 715, 725-27 (1966).

Section 1367(d) facilitates the exercise of this discretion—and the use of federal court jurisdiction generally—by preventing the loss of claims to statutes of limitations where the federal court ultimately declines to exercise supplemental jurisdiction, and where state law does not, itself, provide for a tolling period. To wit:

> The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

28 U.S.C. § 1367(d).

1. Before Section 1367(d) became law, federal litigants and federal courts had struggled with "the statute of limitations problems that abound[ed] in supplemental jurisdiction cases." *Federal Courts Study Committee Implementation Act and Civil Justice Reform Act: Hearing on H.R. 5381 and H.R. 3898 Before the Subcomm. on Courts, Intellectual Property, and the Administration of Justice of the House Comm. on the Judiciary*, 101st Cong., 695 (1990) ("*House Hearing*") (Wolf-Egnal explanation of the proposal to codify supplemental jurisdiction). Those problems arose because a claim dismissed without prejudice is treated for statute-of-limitations purposes as if it had never been filed. *See, e.g.*, 37 C.J., *Limitations of Actions*, § 527, at 1083 (1925); *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 351-53 (1988) (explaining that the statute of limitations on state-law claims may expire before the federal court "relinquish[es] jurisdiction," such that "a

dismissal will foreclose the plaintiff from litigating his claims"); *Elmore v. Henderson*, 227 F.3d 1009, 1011 (7th Cir. 2000) (Posner, J.) ("[W]hen a suit is dismissed without prejudice, the statute of limitations is deemed unaffected by the filing of the suit, so that if the statute of limitations has run the dismissal is effectively with prejudice.").

In light of this hornbook principle, litigants with related federal- and state-law claims faced a number of "unattractive options":

> (1) They could file a single federal-court action, which would run the risk that the federal court would dismiss the state-law claims after the limitations period had expired; (2) they could file a single state-law action, which would abandon their right to a federal forum; (3) they could file separate, timely actions in federal and state court and ask that the state-court litigation be stayed pending resolution of the federal case, which would increase litigation costs with no guarantee that the state court would oblige.

Jinks v. Richland Cty., S.C., 538 U.S. 456, 463 (2003).

Where litigants proceeded with the first option—filing one federal suit—federal courts faced a predicament regarding what to do with the state-law claims when the federal claims were dismissed. Some courts retained jurisdiction over the state-law claims to avoid a limitations bar (even when the claims would more appropriately be heard in state court), while others conditioned federal dismissal on the defendant waiving his limitations defense in state court or allowing the federal case to be reopened if the state claims were later deemed time-barred. *Id.* (citing cases); *see, e.g.*,

Newman v. Burgin, 930 F.2d 955, 963 (1st Cir. 1991) (Breyer, C.J.). In the removal context, this Court held that district courts had the power to remand the claims to state court, in part because a dismissal could trigger a state limitations bar, which would "foreclose the plaintiff from litigating his claims," "work injustice to the plaintiff," "conflict with the principle of comity," and "undermine[] the State's interest in enforcing its law." *Cohill*, 484 U.S. at 351-52.

2. The enactment of Section 1367(d) replaced these piecemeal and "inadequate" solutions with "the assurance that state-law claims asserted under § 1367(a) will not become time barred while pending in federal court." *Jinks*, 538 U.S. at 463, 464. If, at the federal dismissal, the state statute of limitations has run, the "period of limitations shall be tolled"—that is, the bar shall have no effect—"while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period." 28 U.S.C. § 1367(d). Congress thereby guaranteed the litigant a period of 30 days to refile in state court free of the bar of an otherwise applicable statute of limitations. *See, e.g.*, 16 *Moore's Federal Practice* § 106.66[3][c] (Lexis 2017) ("[Section 1367(d)] provides a brief window of protection that allows the plaintiff to file in state court without having to face a limitations defense.").[1]

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[1] Although this brief focuses on supplemental state-law claims, Section 1367(d) applies by its terms not only to a dismissal of the claim that depends on supplemental jurisdiction, but also to voluntary dismissal of other claims at the same time or afterwards, which could include federal claims. Section 1367(d) would apply uniformly to all of the dismissed claims and lift otherwise applicable limitations bars.

B. The Present Controversy.

In August 2007, the District of Columbia Department of Health ("DOH") appointed petitioner Stephanie Artis to a temporary term of employment as a Code Enforcement Inspector. Pet. App. 2a. Throughout her employment, Artis clashed with her supervisor, Gerard Brown, whom she believed had falsified reports and singled her out for unfair treatment. Pet. App. 2a. Artis accordingly filed numerous reports and grievances, including a complaint with the U.S. Equal Employment Opportunity Commission ("EEOC"), in which she challenged Brown's conduct and alleged gender discrimination. Pet. App. 2a; *see also* Pet. Br. 7-8.

In November 2010, shortly before Artis's term of employment was due to expire, DOH informed Artis that it would not be renewing her appointment. Pet. App. 2a. In January 2011, Artis amended her EEOC complaint to include a retaliation claim and filed an additional grievance alleging retaliation for reporting Brown's misconduct. Pet. App. 2a-3a.

On September 19, 2011, the EEOC issued Artis a right-to-sue letter, advising that she had 90 days to commence a civil action. D.C. Court of Appeals Joint Appendix ("D.C. App.") 2, Ex. 2 (attachment).

C. Proceedings Below.

1. On December 16, 2011, Artis filed suit against the District of Columbia in the U.S. District Court for the District of Columbia. D.C. App. 2, Ex. 2. Her complaint alleged gender discrimination in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e *et seq.*, termination in violation of the D.C. False Claims Act, D.C. Code § 2-381.01, retaliation in violation of the D.C. Whistleblower Protection Act,

D.C. Code § 1-615.54, and wrongful discharge in violation of public policy. D.C. App. 2, Ex. 2.; *see also Artis v. District of Columbia*, 51 F. Supp. 3d 136, 137 & n.1 (D.D.C. 2014).

Following discovery, the District moved for summary judgment. The court granted the motion on Artis's Title VII claim on June 27, 2014, because "no reasonable jury could conclude that Artis was subjected to gender discrimination while employed by the District." *Id.* at 137; *see id.* at 140 ("There is no Title VII claim here.").

The court declined to exercise supplemental jurisdiction over Artis's remaining claims alleging retaliation and wrongful termination. *Id.* at 139, 141-42 (citing 28 U.S.C. § 1367(c)(3)). Noting its discretion, the court determined that judicial economy, convenience, fairness, and comity "weigh[ed] against retention of the case." *Id.* at 141. In deciding Artis's federal claim, the court explained, it had "developed no familiarity with the [state-law] issues presented." *Id.* at 142. And, because Section 1367(d) "provides for a tolling of the statute of limitations during the period the case was here and for at least 30 days thereafter," Artis could bring her state-law claims "in the appropriate local court" even if the statutes of limitations had run on them while the federal suit was pending. *Id.*

2. Fifty-nine days later, on August 25, 2014, Artis refiled her state-law claims in the Superior Court of the District of Columbia. D.C. App. 1. With the exception of statements pertaining to the court's identity and the dismissed federal claim, the addition of two brief factual allegations, and a reduction in requested damages (from $5 million to $10 million per claim to "no . . . less than" $250,000 per claim), the two complaints are identical. *Compare* D.C. App. 1 (Superior

Court complaint), *with* D.C. App. 2, Ex. 2 (federal court complaint).

The District moved to dismiss the complaint as time-barred, asserting that the respective statutes of limitations for Artis's claims had run while her federal suit was pending, and that she had failed to file her complaint within 30 days of the federal court's dismissal as required by Section 1367(d). Pet. App. 12a.

The Superior Court agreed. Pet. App. 12a-18a. It was "not persuaded" that Section 1367(d) permits a plaintiff to refile beyond the 30-day period. Pet. App. 14a. In other words, it rejected the notion that Section 1367(d) could be read (as Artis claimed) to stop the clock on the state statutes of limitations from the time the federal suit was filed until its dismissal—here, between December 16, 2011 and June 27, 2014—and then add 30 days, thereby permitting Artis to file suit about 2 years following the federal court's dismissal (or as late as July 2016). Moreover, the court reasoned, "a statute of limitation for a state law claim is a creature of the relevant state law," and "[Section] 1367(d) expressly makes this 30-day period inapplicable where state law would otherwise allow for further extension of the limitations period." Pet. App. 15a-17a.[2]

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[2] As petitioner acknowledges (at 10 n.2), the three-year statutes of limitations on her D.C. False Claims Act and wrongful termination claims commenced in November 2010. *See* D.C. Code §§ 2-381.04(a), 12-301(8). Thus, when the federal court dismissed her action on June 27, 2014, the statutes of limitations had run seven months earlier.

The District disputes Artis's assertion (at 10 n.2) that her claim under the D.C. Whistleblower Protection Act accrued in January 2011. *Cf.* D.C. Code § 1-615.54(a)(2) (requiring the claim to be brought "within one year after the employee first becomes

3. The District of Columbia Court of Appeals affirmed. Pet. App. 1a-11a. It, too, concluded that Section 1367(d) could not be read to provide Artis with the "nearly two years remaining on the statute of limitations . . . (plus thirty days) to file her claims in the Superior Court." Pet. App. 4a. Looking to what the statute intended to "toll[]," the court concluded that it permitted "claims that would otherwise have become barred to be pursued in state court if refiled no later than 30 days after federal court dismissal." Pet. App. 7a. That reading was consistent with the statute's purpose of "prevent[ing] the loss of claims to statutes of limitations," Pet. App. 8a (quoting House Report at 30), and "better accommodates [the] federalism concerns" that arise when federal law "invade[s] a historic state power by altering state statutes of limitations," Pet. App. 9a. The court thereafter denied Artis's petition for rehearing and rehearing en banc. Pet. App. 19a.

SUMMARY OF ARGUMENT

Because a claim dismissed without prejudice is treated for statute-of-limitations purposes as if it had never been filed, Section 1367(d) provides a straightforward tolling rule that prevents state-law claims

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aware of the violation"); *Payne v. District of Columbia*, 808 F. Supp. 2d 164, 171 (D.D.C. 2011) (accrual at notice of termination). In any event, even if Artis's whistleblower claim accrued then, her claim might still be untimely even under her view of Section 1367(d). For example, if it accrued on January 5, 2011, only 20 days would have remained in the one-year limitations period when Artis filed suit on December 16; added to the 30 extra days she alleges Section 1367(d) provides, Artis would have had to file suit within 50 days of the district court's dismissal—not the 59 days in which she did file.

from succumbing to an otherwise applicable limitations bar. It directs that the "period of limitations" for any claim asserted under supplemental jurisdiction "shall be tolled while the claim is pending and for a period of 30 days after it is dismissed, unless State law provides for a longer tolling period." Section 1367(d)'s text, context, purpose, and history make clear that the statute provides a disappointed federal litigant with 30 days to refile her claims in state court free of the otherwise applicable limitations bar—"unless State law provides for a longer tolling period."

1. "Toll" has an ordinary meaning, which is simply "to take away (as a right)" or "to remove the effect of." Read naturally, Section 1367(d) provides that a limitations bar in place by operation of law is "removed" or "taken away" for the described period.

That meaning is confirmed by other indicia of statutory interpretation. Most importantly, the broader context in which the word "toll[]" appears confirms that Section 1367(d) removes an otherwise applicable limitations bar while the federal suit is pending and for an additional 30 days. The statute's express enumeration of "a period of 30 days after [the claim] is dismissed," and its self-conscious deferral to "longer [state-law] tolling periods"—which most states have, generally ranging from six months to one year—reinforce the plain operation of Section 1367(d). That operation is also perfectly tailored to Section 1367(d)'s purpose. The provision appears within a federal jurisdictional statute designed to promote the fair and efficient operation of the federal courts. As petitioner acknowledges (at 27), a 30-day period "guarantees" her ability to refile her claims in state court, and state-law limitations and tolling periods otherwise operate as usual. Finally, the drafting history confirms that

Congress meant only to prevent the loss of state-law claims.

Petitioner's arguments to the contrary fail. Her analogy to equitable tolling—the operation of which is unsettled—cannot displace the proper interpretation of Section 1367(d), considered on its own terms. Nor can a hodgepodge of "tolling" statutes sprinkled throughout the U.S. Code justify her interpretation. What is more, while the supposed benefit of her reading is that "diligent" litigants get more time to refile, she fails to explain how that serves any federal purpose, let alone justifies the double-displacement of state law inherent in her view: the significant extension of state statutes of limitations and nullification of state-law tolling periods.

2. Even if Section 1367(d) were susceptible to petitioner's interpretation, it should be rejected. The adjudication of state-law claims in state court is undisputedly a matter at the heart of a state's sovereignty. Her displacement of state statutes of limitations and state-law tolling periods can thus be accepted only if it follows with absolute clarity from the text of the statute. But that is not even the better reading of Section 1367(d), let alone clearly so. Petitioner's suggestion that her intrusive approach poses no "federalism concerns" lacks merit.

Principles of constitutional avoidance counsel the same result. If Section 1367(d) works as petitioner proposes—gratuitously altering when state-law claims may be adjudicated in state courts—there is a serious question whether Congress could enact it under the Necessary and Proper Clause. The Court can, and should, avoid that provocative question.

ARGUMENT

I. Section 1367(d) Provides A Disappointed Federal Litigant With 30 Days To Refile Her Claims In State Court Unless State Law Provides For A Longer Tolling Period.

A. The ordinary meaning of the word "toll" is to remove or take away an effect; thus, "toll[ing]" the period of limitations lifts an otherwise applicable limitations bar.

"[T]he starting point for interpreting a statute is the language of the statute itself." *Consumer Prod. Safety Comm'n v. GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). Because the statute nowhere defines the term "toll[]," it is interpreted in accordance with its ordinary meaning. *See Perrin v. United States*, 444 U.S. 37, 42 (1979); *Taniguchi v. Kan. Pac. Saipan, Ltd.*, 132 S. Ct. 1997, 2002 (2012). When the word is read in this way, the text of Section 1367(d) as a whole is quite clear. It removes the limitations bar "while the claim is pending and for 30 days after [the federal-court dismissal] unless State law provides for a longer tolling period."

1. At the time Congress enacted Section 1367, the primary definition of "toll" in *Black's Law Dictionary* was "[t]o bar, defeat, or take away." *Black's Law Dictionary* 1488 (6th ed. 1990) ("to toll the entry means to deny or take away the right of entry"); *accord id.* 1334 (5th ed. 1979) (same); *cf. FDIC v. Meyer*, 510 U.S. 471, 476 (1994) (construing undefined statutory term by reference to *Black's Law Dictionary*). Common dictionaries defined it in nearly identical terms—as "to take away the right of," or to otherwise "bar, defeat, [or] annul." 18 *Oxford English Dictionary* 204 (2d ed. 1989); *Webster's Third New Int'l Dictionary* 2405 (1976)

("to take away: make null: remove (~statute of limitations)") ("*Webster's Third*"). And it remains recognized today that toll means "to take away (as a right)" or "to remove the effect of." "Toll," Merriam-Webster.com, https://www.merriam-webster.com/dictionary toll (last visited Aug. 7, 2017); *see id.* ("[T]he court did not toll the statute of repose after the statutory period had expired . . . ."). As a matter of ordinary meaning, one can thus "toll" an event, an entitlement, or the consequences of an action.

The origin of the word "toll[]" explains why its primary meaning is the removal of a right or bar that might otherwise exist. The Latin derivation of the term means "to lift up, take away." *Webster's Third* 2405. And, at common law, "tolled" meant the same thing. *See* Abbott, 2 *Dictionary of Terms and Phrases Used in American or English Jurisprudence* 570 (1879) ("barred; taken away"); Byrne, *A Dictionary of English Law* 878 (photo. reprint 1991) (1923) ("As to 'toll' in the sense of taking away"); *id.* 300 (tolling within the doctrine of descent cast); *see also Ricard v. Williams*, 20 U.S. (7 Wheat.) 59, 120 (1822) (considering "whether the possession . . . can be considered as an adverse possession so as to toll the right of entry of the heirs, and, consequently, extinguish, by the lapse of time, their right of action for the land").

Tolling, of course, often refers to statutes of limitations. But there is nothing special about tolling limitations periods versus tolling any other fact, right, or consequence. "To 'toll' a statute of limitations means to show facts which remove its bar of the action." 54 C.J.S., *Limitations of Actions* § 85, at 120 (1987). *Black's* secondary definition of "toll" (Pet. Br. 17)—"[t]o suspend or stop temporarily as the statute of limitations is tolled during the defendant's absence from

the jurisdiction and during the plaintiff's minority"—simply rephrases the primary definition. To "suspend" a limitations period removes or takes away its effect, whether by stopping the running of the limitations period or by removing the bar that ordinarily would accompany its expiration.

That much is illustrated by the way this Court used the terms "toll" and "suspend" in *Hardin v. Straub*, 490 U.S. 536 (1989). In that case, the Court confronted a lower court's refusal to apply a state statute that "toll[ed] the limitations period" for prisoners and others suffering from legal disabilities. *Id.* at 537. Although the statute provided that such persons "shall have 1 year after the disability is removed . . . [to] bring the action *although the period of limitations has run*," *id.* at 540 (quoting Mich. Comp. Laws Ann. § 600.5851(1) (1987) (emphasis added)), the Court freely described the statute as "suspend[ing] limitations periods for persons under a legal disability until one year after the disability has been removed," *id.* at 537. That is because, as a matter of ordinary meaning, the period of limitations ordinarily applicable to the claim—in *Hardin*, a three-year period—*was* "suspended." It had been "take[n] away," "bar[red]," or "defeat[ed]." *See supra* pp. 12-13. That the period had also expired, according to the law's terms, was of no consequence. *Compare* Pet. Br. 20. Nor did it matter that the effect of "tolling" the limitations period was that the prisoner's claim could be brought within "1 year after the disability ha[d] been removed," as the limitations bar was "suspend[ed]" during that time. 490 U.S. at 537.

Similarly, in *Chardon v. Fumero Soto*, 462 U.S. 650 (1983), the Court underscored the ordinary meaning of "toll," explaining that even where there is agreement that the "statute of limitations was tolled," there still

can be "disagree[ment] as to *the effect* of the tolling": the period might be "suspended" such that plaintiff has "the amount of time left in the limitations period" to file her claim; the period might be "renewed [such that] plaintiff has the benefit of a new period as long as the original"; or there might be a "fixed period such as six months or one year during which the plaintiff may file suit without regard to the length of the original limitations period or the amount of time left when tolling began." *Id.* at 652 & n.1 (emphasis added); *see also id.* at 660 n.13 (citing federal statutes with "a variety of different tolling effects").

Applying those principles, the Court in *Chardon* held that its decision in *American Pipe & Construction Co. v. Utah*, 414 U.S. 538 (1974), applied only to the *fact* of tolling. To determine the tolling effect, the Court instructed, it was necessary to look to "state savings statute[s] . . . or, in the absence of a statute, . . . the most closely analogous state tolling statute." *Chardon*, 462 U.S. at 661. "*American Pipe*," the Court explained, simply "does not answer the question whether, in a [42 U.S.C.] § 1983 case in which the filing of a class action has tolled the statute of limitations until class certification is denied, the tolling effect is suspension rather than renewal or extension of the period." *Id.* Because in *Chardon* the Puerto Rican statute directed that the limitations period "begins to run anew when tolling ceases[,] the plaintiff benefits from the full length of the applicable limitations period." *Id.* at 655. In this way, the Puerto Rican law "fully protected" the federal interest being vindicated under Section 1983. *Id.* at 661.

As evidenced above, this Court routinely uses "toll[]" in its ordinary sense. Exceptions to state statutes of limitations, whatever their operation, "are generally

referred to as 'tolling.'" *Bd. of Regents of Univ. of State of N.Y. v. Tomanio*, 446 U.S. 478, 488 (1980); *Johnson v. Ry. Exp. Agency, Inc.*, 421 U.S. 454, 464 (1975). Equity "tolls the statute of limitations," *TRW Inc. v. Andrews*, 534 U.S. 19, 27 (2001), such that the period of limitations "does not begin to run" until the deceptive conduct is discovered, *Holmberg v. Armbrecht*, 327 U.S. 392, 397 (1946). And petitions for rehearing "toll[] the start of the period in which a petition for certiorari must be sought." *Missouri v. Jenkins*, 495 U.S. 33, 45 (1990); *cf. Stogner v. California*, 539 U.S. 607, 652 (2003) (Kennedy, J., dissenting) (discussing state statutes that toll limitations periods for minors by postponing their commencement). Tolling may also lift the bar of the statute of limitations for a specified period of time. *See, e.g.*, *Hardin*, 490 U.S. at 537, 544 (explaining that Michigan law is a "tolling statute" that "toll[s] the limitations period for prisoners" for a period of one year); *Tomanio*, 446 U.S. at 486-87 & n.6 (noting that New York law "codifies a number of the tolling rules developed at common law," including a provision that permits a plaintiff, in certain circumstances, to refile claims within six months of a timely prior action's termination, *see* N.Y. Civ. Prac. L. & R. § 205). Indeed, as discussed below, providing a designated period of time following dismissal is precisely how tolling statutes in this context have operated for centuries. *See infra* pp. 22-24.

2. Although not the ordinary meaning of the word standing alone, "toll" can, of course, be used to refer to numerous specialized operations, including stopping the clock on the limitations period such that it "begins to run again upon a later event." Pet. Br. 18 (quoting *United States v. Ibarra*, 502 U.S. 1, 4 n.2 (1991)); *see also* Pet. Br. 12 ("A litigant who comes to federal court with one year left on the limitations period for her

state-law claim will have one year remaining on that claim in the event it is dismissed, and that year begins running 30 days after the date of dismissal.").

In the cases on which petitioner relies (at 18-19 n.4), that operation is actually described in the statutory language being interpreted. For example, in *Wood v. Milyard*, 132 S. Ct. 1826 (2012), the Court was addressing 28 U.S.C. § 2244(d)(2), which does not use the word "toll" at all, but rather directs that "*[t]he time* during which a properly filed application for State post-conviction or other collateral review . . . is pending *shall not be counted* toward any period of limitation under" 28 U.S.C. § 2244(d)(1) (emphases added). *See also Bendix Autolite Corp. v. Midwesco Enters., Inc.*, 486 U.S. 888, 890 n.1 (1988) (Ohio statute directing that "the time . . . shall not be computed"). In *Kellogg Brown & Root Services, Inc. v. United States ex rel. Carter*, 135 S. Ct. 1970 (2015), the Court was similarly interpreting 18 U.S.C. § 3287, which provides only that "*the running of* any statute of limitations . . . *shall be suspended.*" *See id.* at 1976 (emphases added); *see also Leh v. Gen. Petroleum Corp.*, 382 U.S. 54, 55-56 & n.1 (1965) (same under 15 U.S.C. § 16(b) (1964 ed.)). Nothing in any of these cases suggests that the ordinary meaning of the word "toll" mandates any specific operation.[3]

Here, petitioner asks this Court (at, *e.g.*, 17-19, 22 & n.4) to read similar language into Section 1367(d)—namely that instead of "toll[ing]" the period of limitations, the statute (1) "suspends" (2) the "running

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[3] Nor has this Court "held" anything to the contrary. *See* Pet. Br. 20. The Court does not decide matters "not at issue" in the case before it, nor does it rule through dictum. *Kirtsaeng v. John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013).

of" the period of limitations. But Congress used none of those words. And "[h]ad Congress intended th[at] [technical] construction," of toll, "it could have so indicated." *Smith v. United States*, 508 U.S. 223, 229 (1993). It did not, and "[w]ith a plain, nonabsurd meaning in view, [the Court] need not proceed in this way." *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004); *cf. Smith*, 508 U.S. at 230 ("It is one thing to say that the ordinary meaning of 'uses a firearm' *includes* using a firearm as a weapon . . . . But it is quite another to conclude that, as a result, the phrase also *excludes* any other use.").

3. With the ordinary meaning of "toll" in mind, Section 1367(d) is easily understood. When the federal court dismisses a supplemental claim, it is treated for statute-of-limitations purposes as if the claim had never been filed. This can result in a state-law claim being time-barred under state law. *See supra* pp. 3-4. Section 1367(d) accordingly provides that "the period of limitations"—here its effect as a time-bar—"shall be [removed or taken away] while the claim is pending [in federal court] and for a period of 30 days after it is dismissed." The ease with which these definitional terms—"removed" or "taken away"— can be read into the statute demonstrates that the word "toll" fits as hand in glove with the implementation of a 30-day period in which a dismissed supplemental claim may be refiled in state court free of an otherwise applicable limitations bar. In such a reading, the "tolling effect" is transparent: because at the time of dismissal the statute of limitations has expired (or "run"), tolling simply "removes" the limitations bar.

That reading is confirmed by the statute's proviso that it does not apply at all where state law provides

for "a longer *tolling* period." Like the ordinary meaning of the word "toll," the ordinary meaning of a "tolling period" is one in which the statute of limitations is deemed without effect—irrespective of *how* state law may provide for it. *See Chardon*, 462 U.S. at 652 & n.1. Thus, the "period of limitations . . . shall be [removed or taken away] . . . unless State law provides [that it is removed or taken away] for a longer . . . period." And because most states have tolling periods that remove the bar of the statute of limitations for time-certain periods "longer" than the 30 days provided under Section 1367(d), *see infra* pp. 22-23, the operation of Section 1367(d) harmonizes effortlessly with those state-law tolling periods.[4]

B. The statutory context and purpose confirm that Section 1367(d) lifts any limitations bar while the federal suit is pending and for 30 days thereafter.

It is sufficient that "toll" has an ordinary meaning that makes the operation of Section 1367(d) plain. But if the Court goes further, it should read the word "toll[]" within the specific context in which it is used and in light of its undisputed purpose. *See United States v. Menasche*, 348 U.S. 528, 538-39 (1955) ("It is our duty 'to give effect, if possible, to every clause and word of a statute.'"). Thus, even if "toll[]" could be

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[4] Indeed, if petitioner were correct that the word "toll" unambiguously requires stop-clock tolling (*e.g.*, Pet. Br. 3, 22), then only state-law stop-clock statutes would count for considering whether "State law provides for a longer *tolling* period," thereby excluding nearly all state-law tolling statutes from consideration. *See infra* pp. 22-23; *see also Powerex Corp. v. Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007) ("[I]dentical words and phrases within the same statute should normally be given the same meaning . . . .").

"understood in two or more possible senses or ways," *Chickasaw Nation v. United States*, 534 U.S. 84, 90 (2001), other indicia of congressional intent make clear that the provision operates to take away the bar of the period of limitations—not stop the clock on statutes of limitations or displace state-law tolling provisions.

1. *"30-Day" Provision*: Section 1367(d) "toll[s]" the "period of limitations . . . while the claim is pending and for a period of 30 days after it is dismissed." The express inclusion of the "period of 30 days after [the claim] is dismissed" is both conspicuous and essential to the statute's operation. Because a dismissed supplemental claim is treated for statute-of-limitations purposes as if it had never been filed, the limitations bar may prevent the claim from being refiled in state court. Section 1367(d) thus functions to lift the bar of the statute of limitations—to take away the otherwise applicable defense—if the claim is refiled in state court within "30 days after [the federal suit] is dismissed."

Petitioner asserts (at 23-24) that this understanding of Section 1367(d) "never affects the statute of limitations 'while the claim is pending,'" but that simply is not so. Section 1367(d) operates to remove any limitations bar that goes into effect during the enumerated period. This assures potential federal litigants that their supplemental claims will be protected throughout the federal litigation, and it ensures that a state court later faced with a statute-of-limitations defense will understand that the tolling of the limitations period covers the entire time the limitations bar would otherwise be in effect.

By contrast, if Section 1367(d) stopped the clock such that a disappointed litigant could file her claim months or years after it was dismissed by the federal

court, the inclusion of 30 days within the "tolling period" would be relegated to "insignifican[ce]," *Duncan v. Walker*, 533 U.S. 167, 175 (2001), in the mine-run of cases.

Petitioner's own case is illustrative. She alleges that Section 1367(d) allowed her to file suit 23 months *plus 30 days* following the federal court's dismissal. *See* Pet. App. 4a; Pet. Br. 10 n.2. But there is simply no reason—and petitioner offers none—why Congress would craft a tolling period that expressly provides for "a period of 30 days after [the claim] is dismissed" if the "toll[ing]" it specified *already* offered disappointed litigants the months or years that would ordinarily be left on the state-law period of limitations (no matter how many years had passed during the federal litigation). Unsurprisingly, petitioner cites no other federal statute that describes its operation only as "tolling" but then both stops the clock *and adds time to it*.

Indeed, the 30-day period would not matter in *any* case where the federal suit is dismissed with substantial time still remaining on the limitations period.[5] It would have meaningful effect only in the rare event

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[5] Similarly, petitioner nowhere explains why a federal tolling rule would extend—for months or years—state statutes of limitations that already provide ample time after federal dismissal for the litigant to file in state court. Consider a litigant who files a supplemental state-law claim subject to a three-year statute of limitations in federal court one month after her state-law claim accrues. The federal court dismisses the federal claim after one year and declines to exercise supplemental jurisdiction over the state-law claim. Under hornbook statute-of-limitations principles, the litigant has one year and 11 months to refile her state-law claim in state court. Under petitioner's view, the litigant has two years and 11 months, *plus 30 more days*, within which to file her state-court suit even though that extra time serves no federal interest.

that a plaintiff filed her federal case with essentially no time remaining in the original period of limitations. And if Congress had meant to address only that circumstance, the construction it chose does nothing to signal it.

"Longer Tolling Period": Section 1367(d) also expressly instructs that it does not apply whenever "State law provides for a longer tolling period." The upshot of that provision (which petitioner relegates to a footnote, *see* Pet. Br. 18 n.3) is the implementation of a federal *floor*, which state law displaces whenever the state-law tolling period is "longer": Section 1367(d) applies "*unless* State law provides for a *longer* tolling period."

This language refers to two easily proven facts within Congress's assumed knowledge. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) ("We assume that Congress is aware of existing law when it passes legislation."); *cf. United States v. Texas*, 507 U.S. 529, 534 (1993) ("[S]tatutes which invade the common law . . . are to be read with a presumption favoring the retention of long-established and familiar principles . . . ."). First, state law provides for "tolling periods" and, second, those periods are almost invariably "longer," such that they apply under Section 1367(d).

A clear majority of states—nearly 40—provide litigants with "tolling periods" during which they may refile their claims in the appropriate court. *See Johnson*, 421 U.S. at 463 & n.9; *Burnett v. N.Y. Cent. R.R. Co.*, 380 U.S. 424, 431-32 & n.9 (1965); *see generally* SLLC Am. Br. (statutory appendix).[6] And all

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[6] The *Burnett* Court discussed these statutes in the context of claims that had been dismissed for improper venue. *See* 380 U.S.

but a handful of those states toll the limitations period by "avoiding the bar of the limitations statute" and providing the disappointed litigant with a fixed period of time in which to refile in the proper court—"usually six months or one year after the dismissal." 2 Corman, *Limitation of Actions* § 13.6.1, at 312-13 (1991); *see also* 37 C.J., *Limitations of Actions*, § 537, at 1088 (1925) (tolling statute "prevent[s] the bar which would be applicable"); Ferguson, *The Statutes of Limitation Saving Statutes* 55 (1978) ("*Savings Statutes*") ("a new action may be commenced within a designated period following the dismissal"); *see, e.g.*, Ga. Code Ann. § 9-2-61 (six months); 736 Ill. Comp. Stat. § 5/13-217 (one year). Several states provide briefer periods of 60 or 90 days—but even those periods are still "longer" than the 30-day period provided by Section 1367(d). *See, e.g.*, Tex. Civ. Prac. & Rem. Code Ann. § 16.064 (60 days); Ky. Rev. Stat. Ann. § 413.270 (90 days); Colo. Rev. Stat. Ann. § 13-80-111 (90 days).[7]

Indeed, the states' uniform practice of lifting the bar of the applicable limitations period for a specified time following dismissal is far from coincidental. It dates to the early seventeenth century, when certain disappointed plaintiffs were permitted one year from the judgment in their initial action in which to commence a new action. Ferguson, *Savings Statutes*, at 14, 49-

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at 429-31 & n.9 (citing 31 state statutes). Nevertheless these, or similar statutes—as revised or recodified—apply to dismissals for a variety of reasons, including dismissals from federal court for lack of subject matter jurisdiction. *See* SLLC Am. Br. Part II.

[7] Only one state-law tolling statute of which respondent is aware stops the clock, and it does so by precisely describing its operation. *See* Va. Code Ann. § 8.01-229(E)(1) ("[T]he time such action is pending shall not be computed as part of the period within which such action may be brought . . . .").

59; *see also Gaines v. City of N.Y.*, 215 N.Y. 533, 537-38 (1915) (Cardozo, J.) (tracing lineage of the New York tolling statute to the English Limitation Act of 1623); *id.* at 538-42 ("the Statute of Limitations is not a bar" if the action is refiled "within one year"). That statutory tradition itself resembles a practice in the ancient common law, which provided that where an initial suit "abated for matter of form," the plaintiff would have a time certain within which to bring another suit, calculated according "the number of days which the parties must spend in journeying to" the new court. 37 C.J., *Limitations of Actions*, § 526, at 1082 (1925) (doctrine of journey's account).

Petitioner's reading fails to account for this history or honor Section 1367(d)'s express accommodation of state law. In this very case, for example, if District law had provided that petitioner could refile her claims within 90 days or six months or even one year of the termination of her federal action, *each* such law would be supplanted by operation of Section 1367(d). In none of those instances would the state-law "tolling period" be "longer" than the 23 months (plus 30 days) she would receive under her reading. Indeed, *all* of the generous state-law tolling statutes cited by petitioner (at 18 n.3)—and nearly every state-law tolling statute among the nearly 40 of which respondent is aware—would be supplanted if applied to petitioner's case.[8] It is difficult to see why Section 1367(d) would include an

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[8] Indiana's tolling period is three years. *See* Ind. Code § 34-11-8-1. Louisiana provides that after dismissal the limitations period "runs anew." La. Civ. Code Ann. §§ 3462, 3466; *see also* P.R. Laws Ann. tit. 31, § 5303 (similar). Notably, even in the single state that implements stop-clock tolling—*see supra* n.7, Section 1367(d) might still be "longer" due to the 30-day provision.

express clause *deferring* to such statutes if the operation of Section 1367(d) would ordinarily *supplant* them. *See Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 575 (1982) ("absurd results are to be avoided" where "alternative interpretations consistent with the legislative purpose are available").

Relatedly, if Congress meant to adopt stop-clock tolling—which, as here, could offer a disappointed litigant *years* to refile—it would be particularly incongruous to allow states to provide "longer" tolling periods, but *prevent* states from establishing *shorter* tolling periods, at least where doing so would not compromise the federal court's administration of supplemental claims. The language Congress chose thus confirms its intention to set a federal floor while respecting a state's sovereign interest in having its own statutes of limitations and tolling periods govern the adjudication of state-law claims.

2. Reading Section 1367(d) to permit a disappointed federal litigant 30 days to refile her claims in state court free of the bar of an otherwise applicable statute of limitations also completely satisfies the statute's purpose of preventing the loss of state-law claims.

Section 1367 is located within Title 28 of the United States Code, which is entitled "Judiciary and Judicial Procedure." Moreover, it is situated within Title 28's Chapter 85, which governs the jurisdiction of the federal district courts. Specifically, Section 1367 defines the scope of a federal district court's supplemental jurisdiction to the full extent permitted by the Constitution, reflecting Congress's determination that, as a general matter, federal and state claims should be tried together when they comprise one Article III "case." *See* 28 U.S.C. § 1367(a); *Exxon*, 545 U.S. at

559. That approach "deal[s] economically" with litigation that involves both federal- and state-law claims: it prevents plaintiffs from "(1) splitting the claims and bringing duplicative actions in state and federal courts; (2) abandoning one of the claims altogether; or (3) filing the entire case in state court, thus delegating the determination of federal issues to the state courts." *See* Judicial Conference of the United States, Report of Federal Courts Study Committee 47-48 (Apr. 2, 1990) ("FCSC Report").[9]

Nevertheless, tracking this Court's instruction in *Gibbs*, 383 U.S. at 726, Section 1367(c) provides that supplemental jurisdiction over state-law claims need not be exercised in every case. It "codifies the factors that [this Court] has recognized as providing legitimate bases upon which a district court may decline [to exercise supplemental] jurisdiction," in order to avoid undue intrusion on state-court prerogatives and to further the litigants' interest in obtaining resolution of their dispute by judges having the greatest familiarity with the governing state law. House Report at 29; *see* 28 U.S.C. § 1367(c); *Cohill*, 484 U.S. at 350. To ensure that the exercise of this discretion would not frustrate the broad grant of supplemental jurisdiction in Section 1367(a), however, a mechanism was needed to ensure that claims dismissed under Section 1367(c) would not be deemed barred by statutes of limitations when the litigant refiled them in state court.

Section 1367(d) accordingly provides "'a straightforward tolling rule' . . . [that] promotes fair and efficient

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[9] The Federal Courts Study Committee was convened by Congress with members appointed by the Chief Justice. FCSC Report at 3. Section 1367 "implement[s] [the] recommendation of the Federal Courts Study Committee." House Report at 27.

operation *of the federal courts*" and "eliminates a serious impediment to access . . . on the part of plaintiffs pursuing federal- and state-law claims that 'derive from a common nucleus of operative fact.'" *Jinks*, 538 U.S. at 463 (emphasis added). It "responds to the risk that the plaintiff's state-law claim, even though timely when filed as a part of the federal lawsuit, may be dismissed after the state period of limitations has expired." *Raygor v. Regents of Univ. of Minn.*, 534 U.S. 533, 550 (2002) (Stevens, J., dissenting).

As petitioner acknowledges, reading Section 1367(d) to allow refiling within 30 days after dismissal "guarantees a plaintiff who is unsuccessful in federal court the opportunity to bring [her] claim in state court." Pet. Br. 27.[10] Nothing more is required to address the timeliness concerns inherent in the discretion to decline supplemental jurisdiction.

* * *

Thus, just as in *Exxon*, "[n]o other reading of Section 1367 is plausible in light of the text and structure of the jurisdictional statute." 545 U.S. at 566; *cf. Perry v. Merit Sys. Prot. Bd.*, 137 S. Ct. 1975, 1987 (2017) (adopting the interpretation that "best serves '[the statute's] objective'"). The "specific context in which [toll] is used, and the broader context of the statute as

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[10] A 30-day period also closely tracks the period of time that would follow a garden-variety remand of removed claims to state court. *Cf. Cohill*, 484 U.S. at 351-52 (encouraging remands where the "statute of limitations . . . has expired"); *City of Chi. v. Int'l Coll. of Surgeons*, 522 U.S. 156, 165-66 (1997) (Section 1367(d) "applies with equal force" to removed claims). That petitioner's interpretation of Section 1367(d) would treat a litigant whose claims were remanded radically differently from one whose claims were dismissed without prejudice counsels strongly against her interpretation.

a whole," offer no cause to depart from toll's ordinary meaning. *Robinson v. Shell Oil Co.*, 519 U.S. 337, 341 (1997). The meaning of the statute is plain.

C. The drafting history supports the other indicia of Congress's intent.

In light of the above, there is little need to look to the drafting history of Section 1367(d). *Cf. Exxon*, 545 U.S. at 567. But that history accords with the other indicia of Congress's intent. Petitioner's claim to the contrary (at 29-31) lacks merit.

1. As initially proposed, Section 1367(d) provided that "[t]he period of limitations for any non-federal claim shall be tolled while the claim is pending in the district court and for a period of 30 days after it is dismissed under subsection (c) unless state law provides for a longer tolling period." *House Hearing* at 688. The drafters' note explains that the inclusion of this language was meant to "address[] . . . instances where . . . a state statute of limitations may bar the pleader from asserting [a dismissed] claim in a state court action." *Id.* at 695. By "provid[ing] a uniform federal tolling rule, with a residual state law reference if the state should have a more generous tolling provision," the pleader would have "adequate time to refile in the state court if the pleader so desires." *Id.*

Although minor alterations were made to that provision in the legislative process, it was enacted into law without substantial revision to, or discussion of, either the word "toll[]" or the enumerated "tolling period." *See generally* Wolf, *Codification of Supplemental Jurisdiction: Anatomy of a Legislative Proposal*, 14 W. New Eng. L. Rev. 1, 16-20 & apps. b-e (1992). The report of the House Judiciary Committee makes a brief mention of Section 1367(d), stating that it implements

"a period of tolling of statutes of limitations[,] . . . [t]he purpose [of which] is to prevent the loss of claims to statutes of limitations where state law might fail to toll the running of the period of limitations while a supplemental claim was pending in federal court." House Report at 30; *accord* 136 Cong. Rec. S17581 (daily ed. Oct. 27, 1990) (statement of Sen. Grassley).[11]

Although this history is spare, the statute's objective—to "prevent the loss of claims" where the statute of limitations would bar refiling—is clear. Moreover, it fully supports that Congress was using "toll[]" in its ordinary sense.

2. Petitioner wrongly claims (at 29) that the drafting history "reject[s]" that Section 1367(d) implements a 30-day tolling period. A closer look reveals that the opposite is true.

The nub of petitioner's argument is that the relevant portion of the House Report fails to mention similar language proposed in a 1969 study by the American Law Institute ("ALI"), which the court below cited as reason to interpret Section 1367(d) the way it did. *See* Pet. App. 8a-9a (citing *City of L.A. v. Cty. of Kern*, 328

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[11] Petitioner (at 28-29) seizes on the House Report's use of the word "running" as proof that Section 1367(d) implements stop-clock tolling, but the term plainly refers to *state* tolling laws, almost none of which "toll the running of the period of limitations" in the way petitioner suggests. *See supra* pp. 22-23. Indeed, given that Section 1367(d) is concerned with the federal court's dismissal of supplemental claims that are time-barred, the better reading is that Section 1367(d) applies "where state law might fail to toll the running [out of] the period of limitations while a supplemental claim is pending in federal court." *Cf.* 54 C.J.S., *Limitations of Actions* § 85, at 121 (1987) ("the statute of limitations, the running of which would otherwise bar the cause of action, may be tolled").

P.3d 56, 63 (Cal. 2014)). Even if "mere silence in the legislative history" were probative—and it is not, *see Whitfield v. United States*, 543 U.S. 209, 216 (2005) (citing cases)—a simple comparison of the language reveals that it would be an astonishing coincidence if Section 1367(d) were not the direct descendent of the ALI recommendation.[12]

Under a heading titled "Raising of jurisdictional issues; tolling of statute of limitations," ALI proposed the following statutory language:

> If any claim in an action timely commenced in a federal court is dismissed for lack of jurisdiction over the subject matter of the claim, a new action on the same claim brought in another court shall not be barred by a statute of limitations that would not have barred the original action had it been commenced in that court, if such new action is brought in a proper court, federal or State, within thirty days after dismissal of the original claim has become final or within such longer period as may be available under applicable State law.

ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* 65 (1969) ("ALI Study"). As petitioner recognizes (at 29, 30), this language "provides a 30-day . . . period for the refiling of certain claims" and "support[s]" respondent's position on the

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[12] At the suggestion of the Chief Justice, ALI undertook a multi-year effort to propose legislation that would "achieve a proper jurisdictional balance between the federal and state court systems . . . in light of the basic principles of federalism." ALI, *Study of the Division of Jurisdiction Between State and Federal Courts* 1 (1969) ("ALI Study"). As petitioner acknowledges (at 30), that study was well known to the legislators involved in drafting the Judicial Improvements Act.

meaning of Section 1367(d). The ALI Reporter's note, in turn, explains that this language provides that "in any case in which the dismissal was for lack of jurisdiction,"

> any governing statute of limitations is tolled by the commencement of an action in a federal court, and for at least thirty days following dismissal.

ALI Study at 66.

Section 1367(d) provides in substantially identical terms that

> the period of limitations . . . shall be tolled while the claim is pending and for a period of 30 days after it is dismissed.

In addition, both the ALI proposal and Section 1367(d) contain an express proviso that the federal statute shall not apply if a "longer . . . period" is available under state law.

Petitioner's contention (at 29) that Congress "pointedly did not adopt [ALI's] recommendation" accordingly rings hollow. And if the textual comparison were not enough, scholars this Court has acknowledged as having "detailed, specific knowledge of the statute and the drafting process," *Exxon*, 545 U.S. at 570, have recognized that Section 1367(d) "implements" the ALI recommendation. Mengler *et al.*, *Congress accepts Supreme Court's invitation to codify supplemental jurisdiction*, 74 Judicature 213, 216 & n.28 (1991); *see also* McLaughlin, *The Federal Supplemental*

Jurisdiction Statute—A Constitutional and Statutory Analysis, 24 Ariz. St. L.J. 849, 982 (1992) (same).[13]

Moreover, when ALI later proposed comprehensive revisions to Section 1367 as part of its Federal Judicial Code Revision Project, it explained that its proposal "follows present § 1367(d) in providing a 30-day tolling period during which a dismissed supplemental claim can be filed in state court free of the bar of an otherwise applicable statute of limitations" and that "[t]he tolling provisions of present § 1367(d) and proposed new § 1367(f) are both direct descendants of the more general tolling provision proposed . . . in the Institute's 1969 Study." ALI, *Federal Judicial Code Revision Project* 132, 134 (2004).

The drafting history of Section 1367(d) thus firmly supports respondent's reading of the statute.

D. Petitioner's remaining arguments lack merit.

Petitioner's remaining arguments do not change the proper statutory interpretation.

1. Petitioner's reliance on equitable tolling as the backdrop for her arguments about the meaning of "toll" is unavailing. While she claims (at 18) that "equitable tolling" is stop-clock tolling, that is far from established. *See Ibarra*, 502 U.S. at 4 n.2 (noting only what "[p]rinciples of equitable tolling *usually* dictate" (emphasis added)); *see also Phillips v. Heine*, 984 F.2d

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[13] Petitioner erroneously asserts (at 31) that "in *Exxon*, this Court refused to credit" the views of these scholars "because they were at odds with what '§ 1367 on its face permits.'" In fact, the Court, after holding that "§ 1367 by its plain text overruled" *Zahn v. International Paper Co.*, 414 U.S. 291 (1973), noted that the scholars had reached the same conclusion. 545 U.S. at 566, 570.

489, 492 (D.C. Cir. 1993) ("[Equitable] tolling does not bring about an automatic extension of the statute of limitations by the length of the tolling period. It gives the plaintiff extra time *only* if he needs it." (citation omitted)). Indeed, the courts of appeals are divided on whether equitable tolling provides litigants with a "reasonable" time to proceed or, as petitioner alleges, "stops the clock."[14]

Petitioner also nowhere explains how equitable tolling—which "asks whether federal courts may excuse a petitioner's failure to comply with *federal* timing rules," *Holland v. Florida*, 560 U.S. 631, 650 (2010)—is germane to defining "toll" in a statute that "provides a [federal] tolling rule that must be applied by state courts" to state-law claims, *Jinks*, 538 U.S. at 459 (addressing Section 1367(d)). Indeed, stop-clock tolling serves no federal purpose *whenever* it extends state statutes of limitations that—by virtue of the period's length or the swift action of the federal court—already provide the litigant with plenty of time to refile. In such cases, stop-clock tolling merely adds additional months or years to plainly sufficient state-law limitations periods.

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[14] *Compare Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 452-53 (7th Cir. 1991) (Posner, J.) (tolling provides a "reasonable" extension), *and Amini v. Oberlin Coll.*, 259 F.3d 493, 501 (6th Cir. 2001) (similar), *with Socop-Gonzalez v. INS*, 272 F.3d 1176, 1193-96 (9th Cir. 2001) (en banc) (tolling "stops the clock"), *and Cabello v. Fernández-Larios*, 402 F.3d 1148, 1155-56 (11th Cir. 2005) (same); *see also Simon v. Republic of Iraq*, 529 F.3d 1187, 1195 (D.C. Cir. 2008) (declining to decide the question), *rev'd on other grounds sub nom. Republic of Iraq v. Beaty*, 556 U.S. 848 (2009); *New Castle Cty. v. Halliburton NUS Corp.*, 111 F.3d 1116, 1126 n.11 (3d Cir. 1997) (same).

2. In an effort to show that Section 1367(d) implements stop-clock tolling, petitioner also leans heavily (at 20-22 & n.5) on a hodgepodge of cherry-picked statutes she alleges use "toll[]" in this sense. But even if petitioner's survey of the U.S. Code demonstrated that the word in *those* statutes refers to stop-clock tolling (and that is unclear), that would say little about the meaning of "toll" in *this* statute. *See Yates v. United States*, 135 S. Ct. 1074, 1082 (2015) (plurality opinion) (collecting cases "affirm[ing] that identical language may convey varying content when used in different statutes").[15]

As an initial matter, none of these statutes are related to the enactment of the supplemental jurisdiction statute. *See Reno v. Koray*, 515 U.S. 50, 56 (1995) (interpreting phrase in Sentencing Reform Act of 1984 with reference to a similar phrase in the Bail Reform Act of 1984, which were "enacted in the same statute"); *Gozlon-Peretz v. United States*, 498 U.S. 395, 407-08 (1991) (interpreting provision of the Anti-Drug Abuse Act of 1986 with reference to the Sentencing Reform Act of 1984). Nor do they share "a common purpose" with it. *Oscar Mayer & Co. v. Evans*, 441 U.S. 750, 756 (1979) (interpreting Section 14(b) of the Age Discrimination in Employment Act in light of Section 706(c) of Title VII); *see also Northcross v. Bd. of Ed. of Memphis City Sch.*, 412 U.S. 427, 428 (1973) (per curiam).

The only statute even in the same chapter as Section 1367(d)—and petitioner's premier example (at 12-13,

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[15] A number of the statutes cited by petitioner (at 22 n.5), simply use the word "toll[]," without more, and some do not involve statutes of limitations at all. *See, e.g.*, 15 U.S.C. § 6603(h) (the "[e]nforcement of obligations [is] merely tolled"); 15 U.S.C. § 6614(c)(3)(C) (class member "toll[ing] to the full extent provided under Federal law").

20-21)—is 28 U.S.C. § 1332(d), a 2005 statute codifying the part of the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4 (2011), that extends federal diversity jurisdiction over "mass actions" that meet certain criteria. *See id.* § 1332(d)(2), (5)(B); *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013). But the terms of Section 1332(d)(11)(D) provide only that "[t]he limitations periods . . . shall be deemed tolled during the period that the action is pending in Federal court." That is not stop-clock tolling—on its face or in any other respect. All the statute appears to do is implement for mass actions this Court's ruling in *American Pipe*, which, as discussed above, *see supra* p. 15, simply establishes *the fact* of tolling, while leaving the "tolling effect" to the appropriate state or federal law.

Moreover, "toll" is not the sort of "specialized statutory term[]" that would merit a tour through the U.S. Code. *Gozlon-Peretz*, 498 U.S. at 408. Unlike in *Gozlon-Peretz*, where the term at issue was "supervised release," which the Court found was "a unique method of post-confinement supervision invented by the Congress for a series of sentencing reforms," *id.* at 407, the meaning of "toll" is an ordinary one, as petitioner recognizes, *see* Pet. Br. 17 (referring to both "legal and general dictionaries"). Even if the word "toll" sometimes refers to stop-clock tolling, the presumption of uniform usage "'readily yields' . . . when [the] word used has several commonly understood meanings among which a speaker can alternate in the course of an ordinary conversation, without being confused or getting confusing." *Gen. Dynamics Land Sys., Inc. v. Cline*, 540 U.S. 581, 595-96 (2004).

3. Finally, Petitioner supports her stop-clock reading of Section 1367(d) by asserting that "[i]t is

easy to see why Congress thought that a diligent litigant should have more [time]" to refile her state-law claims. Pet. Br. 28 (asserting that the diligent litigant could use that extra time to "find new counsel, and . . . reassess litigation strategy"). But that operation of the statute, which petitioner cuts from whole cloth, serves no federal jurisdictional purpose and defies common sense.

It is common ground that Section 1367(d) "guarantees" a federal forum for federal claims. *See* Pet. Br. 27. But nowhere is it evident why the statute's operation would discriminate among litigants based on when in the state limitations period the litigant chose to file suit.[16] While *a state* might have an interest in a litigant filing her claim long before the limitations period expires, that is hardly a federal concern, or one Section 1367(d) was enacted to address. Petitioner does not—and cannot—offer a justification for how discriminating among litigants "promotes the fair and efficient operation of the federal courts," *Jinks*, 538 U.S. at 463.

Indeed, as a practical matter, when a federal suit is filed likely has little to do with "diligence," but rather with purely practical matters, such as understanding

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[16] A simple example suffices. Imagine two litigants who each bring suit in federal court alleging an identical state-law claim governed by a two-year statute of limitations. In each case, after several years of litigation, the claim is dismissed under Section 1367(c). The first litigant, however, brought suit the week before the statute of limitations was to expire, while the second litigant brought suit within 90 days of the claim's accrual. Under petitioner's view of the statute, the first litigant will have just over a month after dismissal of her federal suit to bring suit in state court. The second litigant will have just short of *two years*.

of the legal claim, development of evidence to substantiate it, opportunity for non-judicial resolution, urgency for a determination of legal rights, access to counsel, and concerns about stale evidence and forgetful witnesses. The time permitted to bring suit on the federal claim, or the fact that some state-law claims have shorter limitations periods than others, are also significant factors—and both are present here: Artis had 90 days after the issuance of her right-to-sue letter to file her Title VII claim, *cf. Mohasco Corp. v. Silver*, 447 U.S. 807, 825 (1980) ("Congress clearly intended to encourage the prompt processing of all charges of employment discrimination."); and the statute of limitations on her state-law whistleblower claim was on the verge of expiring. *See supra* p. 6 & n.2.

As Artis's own case demonstrates, one can hardly discern by reference to the time of filing alone which plaintiffs are diligent and which are dilatory. Nor does it make any sense that the reward for a plaintiff who is diligent on the front end of her litigation would be the prerogative to be dilatory on the back end.

II. Petitioner's Reading Of Section 1367(d) Lacks The Clear Statement From Congress It Would Require And Raises Significant Constitutional Questions.

Petitioner interprets Section 1367(d) to displace state-law tolling periods and permit a disappointed federal litigant to file her state-law suit months or even years after the state statute of limitations otherwise would have expired. That misreads the statute for the reasons discussed. But even if "toll[]" in Section 1367(d) were susceptible to petitioner's interpretation, it could not be adopted. It falls far short of satisfying the ordinary rule of statutory construction that if Congress intends to alter the

"usual constitutional balance between the States and the Federal Government, it must make its intention to do so unmistakably clear in the language of the statute." *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991) (internal quotation marks omitted); *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947) ("[W]e start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress."). And because petitioner's interpretation raises serious constitutional questions—*viz.*, whether Congress may, for no federal purpose, extend state statutes of limitations and displace state-law tolling periods—Section 1367(d) should be construed to avoid those questions. This Court's decision in *Jinks* (*cf.* Pet. Br. 32-33) is not to the contrary.[17]

A. There is no clear statement that Congress intended to extend state statutes of limitations and displace state-law tolling periods via stop-clock tolling.

1. "Federal statutes impinging upon important state interests 'cannot . . . be construed without regard to the implications of our dual system of government.'" *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544 (1994). The states' prerogative to set statutes of limitations is widely acknowledged. Statutes of limitations "represent a public policy about the privilege to litigate," *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304,

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[17] While the District has a unique relationship with the federal government, *cf.* BIO 14 & n.4, it is a "State" for purposes of Section 1367, *see* 28 U.S.C. § 1367(e), and this Court should consider the constitutional implications of petitioner's interpretation, whether as a matter of constitutional avoidance, *see infra* pp. 46-49, or on the merits, *see* States Am. Br. Part II.

314 (1945), and "have long been respected as fundamental to a well-ordered judicial system," *Tomanio*, 446 U.S. at 487. "[T]he time after which suits or actions shall be barred, has been, from a remote antiquity, fixed by every [government], in virtue of that sovereignty by which it exercises its legislation for all persons and property within its jurisdiction." *M'Elmoyle v. Cohen*, 38 U.S. (13 Pet.) 312, 327 (1839); *cf. Felder v. Casey*, 487 U.S. 131, 138 (1988).

State limitations periods also necessarily depend on—and vary because of—local considerations.[18] "[T]he length of the [limitations] period" in state law "reflects . . . the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones." *Johnson*, 421 U.S. at 463-64; *see also Tomanio*, 446 U.S. at 487; *United States v. Kubrick*, 444 U.S. 111, 117 (1979). As such, limitations periods reflect quintessentially "legislative decision[s]," *Hardin*, 490 U.S. at 544, and "value judgment[s]," *Johnson*, 421 U.S. at 463.

Tolling, too, is "an integral part of a complete limitations policy." *Tomanio*, 446 U.S. at 488; *Wallace v. Kato*, 549 U.S. 384, 394 (2007). "In virtually all statutes of limitations the chronological length of the limitation period is interrelated with provisions regarding tolling, revival, and questions of application." *Johnson*, 421 U.S. at 464; *see also Burnett*, 380 U.S. at 431-32 & n.9 (listing state statutes that "preserv[e] causes of action which would otherwise be barred by the passing of a limitation period"). This Court has accordingly

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[18] For example, the statutes of limitations for breach of a written contract vary from three years in the District (D.C. Code § 12-301(7)), to six years in New York (N.Y. Civ. Prac. L. & R. § 213(2)), to 10 years in Illinois (735 Ill. Comp. Stat. § 5/13-206).

long cautioned against displacing both state statutes of limitations and state-law tolling rules. *See, e.g.*, *Hardin*, 490 U.S. at 539 ("Courts . . . should not unravel state limitations rules unless their full application would defeat the goals of the federal statute at issue.").

In enacting Section 1367(d), a statute that "toll[s]" periods of limitations for state claims "unless State law provides for a longer tolling period," Congress has self-consciously legislated in an area in which states have a traditional interest. Moreover, it is undisputed that "the interpretation urged by petitioner would have a profound effect on that interest." *BFP*, 511 U.S. at 544. Specifically, petitioner asserts (at 17-22) that Section 1367(d) implements stop-clock tolling, which has two certain effects. First, state statutes of limitations are extended for as much time as is left on the limitations period when the plaintiff files the federal suit (Pet. Br. 3, 17-19), plus 30 days, even where the original limitations period may provide the litigant with months or years to refile. Second, state-law tolling periods are superseded whenever they are not "longer" than what plaintiff would receive under Section 1367(d) (Pet. Br. 18 & n.3). By contrast, if Section 1367(d) provides for a 30-day period to refile after the federal-court dismissal, it applies only in limited circumstances because most states "provide[] for a longer tolling period," *see supra* pp. 22-23, and states without a state-law tolling period—like the District of Columbia here—have their statutes of limitations affected only to the extent that a disappointed federal litigant is permitted a brief period to refile the claim in state court.

Section 1367(d) does not come close to manifesting the clear intent required for petitioner's reading of the statute.

This Court routinely cautions that "general language" is "insufficient to satisfy clear statement requirements." *Raygor*, 534 U.S. at 545. In *Raygor*, this Court considered whether Section 1367(d)'s language, which on its face applied to "any claim" asserted under Section 1367(a), extended to state-law claims first asserted against state actors in federal court. 534 U.S. at 542-46. The Court held that the modifier "any" in Section 1367(d), standing alone, was insufficient to find "unmistakably clear" congressional intent to alter the usual constitutional balance between the states and the federal government. *Id.* In *CTS Corp. v. Waldburger*, 134 S. Ct. 2175 (2014), this Court likewise read the statutory phrase "applicable limitations period" narrowly, in part because "[i]n our federal system, there is no question that States possess the traditional authority to provide tort remedies to their citizens as they see fit." *Id.* at 2189 (internal quotation marks omitted); *see also Bond v. United States*, 134 S. Ct. 2077, 2088-92 (2014) (construing "chemical weapon" narrowly to address the statute's "core concerns" and avoid "interpreting the statute's expansive language in a way that intrudes on the police power of the States"); *McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016) (declining to interpret "official act" in a manner that "involves the Federal Government in setting standards of good government for local and state officials" (internal quotation marks omitted)).

Such "general language" is also "insufficient" here. *Raygor*, 534 U.S. at 545. Section 1367(d) provides only that the "period of limitations . . . shall be tolled

. . . unless State law provides for a longer tolling period." The use of the word "toll" is not an express instruction for the extension of state-law limitations periods and the displacement of state-law tolling periods through stop-clock tolling. Nor is it "plain to anyone reading [Section 1367(d)]," *Gregory*, 501 U.S. at 467, that it has that effect—especially given, as this Court has long acknowledged, the myriad ways in which tolling can operate, *see supra* pp. 14-15. There is simply no sign in the statutory context or the drafting history that Congress intended Section 1367(d) to have the operation ascribed to it by petitioner, and as petitioner rightly concedes (at 27), her interpretation is not necessary to ensure a federal forum for federal claims. *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 656 (1995) (looking to the "objectives of the [federal] statute as a guide to the scope of the state law that Congress understood would survive").

That is the end of the matter. Unless Congress manifests a clear intent to the contrary—and it has not—"federal legislation threatening to trench on" states' rights "should be treated with great skepticism, and read in a way that preserves a State's chosen disposition of its own power, in the absence of the plain statement *Gregory* requires." *Nixon v. Mo. Mun. League*, 541 U.S. 125, 140 (2004); *see also Rice*, 331 U.S. at 230. The word "toll[]" is not "limited to [petitioner's] reading, and neither statutory structure nor legislative history points unequivocally to a commitment by Congress" to implement stop-clock tolling. *Nixon*, 541 U.S. at 141. "The want of any 'unmistakably clear' statement to that effect . . . [is] fatal" to petitioner's argument. *Id.* (citation omitted).

2. Petitioner's claim (at 31) that her interpretation of Section 1367(d) raises no "federalism concerns" is perfunctory and lacks merit.

As an initial matter, petitioner confuses Congress's power to enact Section 1367(d) with whether there is a sufficiently clear statement that Congress intended to upset "the usual constitutional balance of federal and state powers." *Gregory*, 501 U.S. at 460 (internal quotation marks omitted). *Jinks* answered only the former question; it had no need to address, let alone resolve, the latter. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 56-58 (1996) (distinguishing between whether Congress provided a "'clear' statement" from "whether the Act was passed 'pursuant to a valid exercise of power'"); *cf. Reno v. Condon*, 528 U.S. 141, 149 (2000). Here, there is no clear statement that Congress intended—as a rule—to extend state statutes of limitations for months or years, or to displace state-law tolling schemes.

Petitioner's argument (at 33) that no clear statement is required to effect her conception of Section 1367(d)—because a clear statement of *some* displacement is a clear statement of *all* displacement—lacks merit. Even assuming that Section 1367(d) can be understood as an express statement that Congress intended to displace *something* about state statutes of limitations ("the period of limitations . . . shall be tolled")—and that is hardly certain—that says nothing about the *scope* of that displacement.

As this Court has explained, "when the text of a pre-emption clause is susceptible of more than one plausible reading, courts ordinarily 'accept the reading that disfavors pre-emption.'" *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (quoting *Bates v. Dow Agrosciences*

LLC, 544 U.S. 431, 449 (2005)). Even where the language Congress chose "pre-empt[s] at least some state law, we must nonetheless 'identify the domain expressly pre-empted' by that language." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 484 (1996) (citation omitted); *see also Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 517 (1992). "If a federal law contains an express pre-emption clause, it does not immediately end the inquiry because the question of the substance and scope of Congress' displacement of state law still remains." *Altria*, 555 U.S. at 76.

Were it otherwise, that would give "mere congressional ambiguity" "the state-displacing weight of federal law," which "would evade the very procedure for lawmaking on which *Garcia* [*v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985),] relied to protect states' interests." *Gregory*, 501 U.S. at 464 (quoting Tribe, *American Constitutional Law* § 6-25, at 480 (2d ed. 1988)).

Indeed, this case demonstrates why there is nothing "misguided" (Pet. Br. 33) about applying those principles here, where the displacement petitioner is proposing is not so much a difference in degree as a difference in kind. Section 1367 ensures that the ability of a litigant to bring her federal claims in federal court is not frustrated by the threat that her state claims might be lost if the federal court ultimately declines to exercise jurisdiction over them. And that objective countenances "tolling" the bar of state statutes of limitations for a brief period after the claims are dismissed. But it remains, at best for petitioner, *unclear* whether Congress intended to materially extend state-law limitations periods and wholly displace state-law tolling provisions, particularly where doing so concededly serves no federal jurisdictional purposes. *That*

intrusion—if it was intended—requires a clear statement.[19]

Finally, petitioner argues (at 33-34) that because it is not *unprecedented* for federal law to displace state statutes of limitations, there is no actual "disrupt[ion]" of the "usual constitutional balance between the States and the Federal Government." That argument proffers a startling erosion of the principles of federalism and is not supported by the sole precedent on which petitioner relies, *United States v. Locke*, 529 U.S. 89 (2000). *Locke* addressed state laws that "bear upon national and international maritime commerce"—an archetypal area of federal concern. *Id.* at 108. Here, the issue is a federal statute that displaces state limitations rules for state-law claims being adjudicated in state courts. That area, quite unlike that in *Locke*, is unquestionably one that "States have traditionally occupied." *Id.*

Moreover, even if federal "statutes tolling state limitations periods go back at least 150 years" (Pet. Br. 33-34), it is striking that such statutes have been

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[19] *Gobeille v. Liberty Mut. Ins. Co.*, 136 S. Ct. 936 (2016), is not to the contrary. *See* Pet. Br. 33. There, the Court, having noted ERISA's exceptionally broad preemption clause, held that ERISA "certainly contemplated the pre-emption of substantial areas of traditional state regulation" and therefore "[a]ny presumption against pre-emption, whatever its force in other instances, cannot validate a state law that enters a fundamental area of ERISA regulation." *Id.* at 943, 946. Other circumstances under which this Court has declined to apply the presumption against pre-emption are equally distinguishable. *See, e.g.*, *Puerto Rico v. Franklin Cal. Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (addressing Puerto Rico's entry into bankruptcy—an exclusively federal area—and holding that "the plain text of the Bankruptcy Code begins and ends our analysis").

reserved for exceptional cases.[20] Nothing about these or a handful of other statutes transforms the federal tolling of state statutes of limitations into an area with "a history of significant federal presence." *Locke*, 529 U.S. at 108; *see also Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009). Moreover, whatever Congress's *power* to intrude into state prerogatives, *cf. Jinks*, 538 U.S. at 461-65, the point is that Congress did not exercise it here—let alone clearly so.

B. Reading Section 1367(d) to implement stop-clock tolling would raise serious doubt as to its constitutionality.

If Section 1367(d) were susceptible to petitioner's interpretation, serious doubt as to its constitutionality would require the Court to reject it. *See INS v. St. Cyr*, 533 U.S. 289, 300 (2001) ("[W]here an alternative interpretation of the statute is 'fairly possible,' [courts] are obligated to construe the statute to avoid [constitutional] problems." (citation omitted)); *Edward J. DeBartolo Corp. v. Fla. Gulf Coast Bldg. & Constr. Trades Council*, 485 U.S. 568, 575 (1988); *Clark v. Martinez*, 543 U.S. 371, 381 (2005). That is particularly true where, as here, there is an alternative that is far more consonant with congressional intent.

Recognition of the limits of the Necessary and Proper Clause is an essential part of protecting the

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[20] Examples involve insurrection, *see Stewart v. Kahn*, 78 U.S. (11 Wall.) 493, 494 (1870) (upholding statute suspending limitations periods where it was not possible by "reason of resistance to the execution of the laws of the United States" to serve process); terms of military service, *see* Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. § 525; or sui generis aspects of the Bankruptcy Code, 11 U.S.C. § 108(c) (extending limitations periods while the automatic stay is in effect plus 30 days). *See Jinks*, 538 U.S. at 461 n.1.

federalism interests already addressed. The Clause provides that "Congress shall have Power . . . [t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof." U.S. Const. art. I, § 8, cl. 18. The language of the Clause "makes clear that the Constitution's grants of specific federal legislative authority are accompanied by broad power to enact laws that are 'convenient, or useful' or 'conducive' to the authority's 'beneficial exercise.'" *United States v. Comstock*, 560 U.S. 126, 133-34 (2010) (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 413, 418 (1819)).

To be sure, "necessary" "does not mean 'absolutely necessary.'" *Id.*; *see also Jinks*, 538 U.S. at 462 ("The federal courts can assuredly exist and function in the absence of § 1367(d) . . . ."). But "respect for Congress's policy judgments . . . can never extend so far as to disavow restraints on federal power that the Constitution carefully constructed." *Nat'l Fed'n Indep. Bus. v. Sebelius*, 567 U.S. 519, 538 (2012) (opinion of Roberts, C.J.). Thus, "even when the end is constitutional and legitimate, the means must be 'appropriate' and 'plainly adapted' to that end." *Gonzales v. Raich*, 545 U.S. 1, 39 (2005) (Scalia, J., concurring in the judgment) (quoting *McCulloch*, 17 U.S. at 421)). "Moreover, they may not be otherwise 'prohibited' and must be 'consistent with the letter and spirit of the constitution.'" *Id.*

In *Jinks*, this Court rejected a facial challenge to the constitutionality of Section 1367(d). It concluded that the statute "is conducive to the administration of justice because it provides an alternative to the unsatisfactory options that federal judges faced when they

decided whether to retain jurisdiction over supplemental state-law claims that might be time barred in state court" and "eliminates a serious impediment to access to the federal courts on the part of plaintiffs pursuing federal- and state-law claims" by providing "the assurance that state-law claims asserted under § 1367(a) will not become time barred while pending in federal court." 538 U.S. at 462, 463-64 (citing Congress's power to "constitute Tribunals inferior to the supreme Court," and to "assure that those tribunals may fairly and efficiently exercise '[t]he judicial Power of the United States'" (citations omitted)). The Court was also "persuaded, and respondent d[id] not deny," that "§ 1367(d) is 'plainly adapted' to the power of Congress to establish the lower federal courts and provide for the fair and efficient exercise of their Article III powers." *Id.* at 464.

Petitioner's reading of Section 1367(d), however, transforms the statute from one concerned with the federal court's jurisdiction to one that, as petitioner effectively concedes (at 27), gratuitously regulates when state-law claims may be litigated in state courts. While "tolling" is no doubt a sufficient "alternative to the unsatisfactory options" federal courts faced before Section 1367(d) was enacted, *Jinks*, 538 U.S. at 462, petitioner interprets it to significantly extend state statutes of limitations and displace obviously generous state-law tolling periods, with no apparent relationship to Congress's authority over the establishment of the lower federal courts and oversight of their efficacy, *id.* at 463-64.

Even without petitioner's concession, her view of "tolling" at most bears a tangential relationship to something on which Congress is permitted to legislate. By stopping the clock on state statutes of limitations,

petitioner posits, Congress gave disappointed federal litigants months or years to refile their claims in state court, which, in turn, plays a part in ensuring that those litigants are not dissuaded from bringing their claims in federal court in the first place—even though a 30-day period after dismissal would accomplish the same result. But there is serious constitutional doubt whether such an overbroad approach is "really calculated to effect any of the objects entrusted to the [federal] government," particularly at the extreme (and potentially extremely common) end of what petitioner's view would countenance. *McCulloch*, 17 U.S. at 423; *see also Zivotofsky ex rel. Zivotofsky v. Kerry*, 135 S. Ct. 2076, 2104 (2015) (Thomas, J., concurring in part and dissenting in part) ("The [Necessary and Proper] Clause is not a warrant to Congress to enact any law that bears some conceivable connection to the exercise of an enumerated power.").

Moreover, while this Court determined in *Jinks* that Section 1367(d) was proper because "the tolling of limitations periods" did not "fall into the category of 'procedure' immune from congressional regulation," 538 U.S. at 465, there is no indication that the Court ever considered that Section 1367(d) involved the kind of needless intrusion petitioner advocates for here. If permitting Congress to intrude on state law and state sovereignty in this fashion—again, for no federal purpose—would not raise a significant concern that Congress was "reach[ing] beyond the natural limit of its authority" and "draw[ing] within its regulatory scope" things that would otherwise be outside it, *Sebelius*, 567 U.S. at 560 (opinion of Roberts, C.J.), it is difficult to imagine what would.

CONCLUSION

The judgment of the District of Columbia Court of Appeals should be affirmed.

Respectfully submitted,

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STATUTORY ADDENDUM

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28 U.S.C. § 1367. Supplemental jurisdiction.

(a) Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.

(b) In any civil action of which the district courts have original jurisdiction founded solely on section 1332 of this title, the district courts shall not have supplemental jurisdiction under subsection (a) over claims by plaintiffs against persons made parties under Rule 14, 19, 20, or 24 of the Federal Rules of Civil Procedure, or over claims by persons proposed to be joined as plaintiffs under Rule 19 of such rules, or seeking to intervene as plaintiffs under Rule 24 of such rules, when exercising supplemental jurisdiction over such claims would be inconsistent with the jurisdictional requirements of section 1332.

(c) The district courts may decline to exercise supplemental jurisdiction over a claim under subsection (a) if—

(1) the claim raises a novel or complex issue of State law,

(2) the claim substantially predominates over the claim or claims over which the district court has original jurisdiction,

(3) the district court has dismissed all claims over which it has original jurisdiction, or

(4) in exceptional circumstances, there are other compelling reasons for declining jurisdiction.

(d) The period of limitations for any claim asserted under subsection (a), and for any other claim in the same action that is voluntarily dismissed at the same time as or after the dismissal of the claim under subsection (a), shall be tolled while the claim is pending and for a period of 30 days after it is dismissed unless State law provides for a longer tolling period.

(e) As used in this section, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.